

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Reexamination of Roaming Obligations of 05-265)WT Docket No.
Commercial Mobile Radio Service Providers)	
)	
Automatic and Manual Roaming Obligations))WT Docket No. 00-193
Pertaining to Commercial Mobile Radio Services)	

To: The Commission

REPLY COMMENTS OF NTCH, INC.

NTCH, Inc. (“NTCH”) hereby submits its reply to comments filed in the above-referenced proceeding. Predictably, the nationwide Tier I carriers (“the Majors”) do not see a problem – that is because they *are* the problem. The small and regional carriers like NTCH and their group associations unanimously demonstrated that they continually find themselves faced with either (1) an inability to have *any* automatic roaming agreement at all or (2) offers of roaming rates greatly in excess of both cost and the rates offered to preferred roaming partners. The paucity of potential roaming partners which has developed as a result of the intense consolidation in the CMRS industry over the last few years has severely heightened the problem. In most markets, because a carrier’s customers must roam on carriers with

compatible air interfaces, the number of roaming partners is limited. NTCH, for example, is a CDMA carrier, which effectively limits it to two Majors as potential roaming partners in many markets. Neither of these carriers has been willing to enter into an economically viable agreement despite numerous requests over the last six years. Often the suggested rate is as much as ten times the amount charged to preferred entities like affiliates or MVNOs. In one case the Major was unwilling to enter into a roaming agreement even in an area where it had no coverage itself and there was no other alternative for its customers.

The present situation is in significant measure a result of the Commission's failure to effectively implement the promise of its entrepreneur blocks and Designated Entity policies. These policies were intended to implement the Congressionally mandated national principle that encouragement of small businesses was good and that spectrum offered to the public should not just be gobbled up by giant corporations. This principle recognizes that innovation and good service often arise from creative, nimble, market-sensitive entrepreneurs who are in close touch with their local markets. What in fact has happened is that the entrepreneur rules and DE rules, as applied, permitted the giants not only to acquire large amounts of spectrum in their own names but also to effectively control DEs and entrepreneurs through cleverly structured organizational arrangements. After five years, even these ploys are unnecessary and the spectrum intended

for small businesses can be – and has been – sold to the Majors. The nationwide network of small businesses which could and should have arisen as an alternative to the Majors was unable to develop because the Commission ceded the spectrum intended for small businesses to the Majors. The nation is the poorer for this.

What we have here is a serious failure of market forces. Because the Majors sit in a monopoly or duopoly position on this issue, they can exploit that situation to squeeze independent carriers dry or put them at a competitive disadvantage. This is utterly contrary to the bedrock principle on which the cellular service was based – that “roaming on broadband wireless networks is important to the development of nationwide, ubiquitous and competitive wireless voice communications”¹. Equally important, for present purposes, is that the present situation is one where regulatory intervention is urgently called for. The Commission correctly refrains from imposing regulation where the workings of competition act to drive down prices and improve quality of service. In this case, however, the absence of effective competition is having exactly the opposite effect. The parallel to the situation in 1913 which NTCH alluded to in its initial comments is really quite striking – the Bell System owned all the major markets and it was refusing to let the independent telcos interconnect with their urban systems, effectively squeezing the independents out of business. When the Justice

¹ *Interconnection and Resale Obligations Relating to the Commercial Mobile Radio Service*, 4 CR 452 (1996).

Department compelled the Bell System to permit interconnection, both the customers of rural independents *and* the customers of the urban Bell System benefited because they could all communicate with each other at reasonable rates.

Because a competitive market for roaming does not exist, it is critical that the Commission establish benchmarks which prevent abuse. First, NTCH agrees with the Majors that the Commission should prevent carriers from using roaming as a substitute for building out their own networks or for building out in high cost/low subscriber regions. Absent an infrastructure of more than nominal cell sites, a bogus carrier could simply “roam” everywhere without ever providing real “home” service. To preclude that abuse, the Commission should require that, in order to qualify for mandatory automatic roaming, carriers must provide service to at least 50% as much of

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In addition, rate levels guidelines must be established which are less confiscatory and more cost-related than the current offerings by the Majors. NTCH suggests that a reasonable and useful benchmark would be the lowest of rates charged by a company either to affiliated or partnered entities, MVNOs, RLEC-affiliated mobile carriers or USF-subsidized carriers. In NTCH’s experience, the rates offered by the Majors to these entities have been reasonable. Any roaming rate exceeding 125% of that amount would be

deemed presumptively unreasonable unless the charging carrier justified the difference.

In this regard, the unique status of RLEC-affiliated companies bears mention. Often such firms have qualified for USF subsidies while other equally eligible competing companies' applications for ETC status have languished for years at the Commission. The Majors tend to rely on these carriers as their preferred roaming partners because they can provide service at a subsidized rate where the Majors themselves could not economically operate. The RLEC affiliates also tend to provide highly localized service and are therefore not a competitive threat to the Majors in their core areas. The RLEC-affiliated CMRS carrier therefore gets a double bonus – operations subsidized from the universal service fund *plus* preferred roaming rates from the Majors. This advantaged situation makes competition for independent carriers in those rural areas extremely difficult if not impossible. It's a classic case of a grossly uneven playing field.

The Commission should make no mistake: the continued health and even the very existence of the independent mobile telephone network depends on the Commission recognizing the existence of a serious problem and taking decisive action to correct it.

Respectfully submitted,

NTCH, Inc.

By Glenn W. Ishihara

Its President